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CITATIONS

758701—47

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 160

JOHN DI BENEDETTO, PETITIONER

v.

THE UNITED STATES

No. 161

WAYLAND C. DORRANCE, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR WRITS OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Claims (DiB. R. 8–13, 14; D. R. 10–11)[1] have not yet been reported.

[1] References to the DiBenedetto record will be preceded by the notation "DiB."; to the Dorrance record, by "D."

JURISDICTION

The judgments of the Court of Claims were entered on January 6, 1947 (DiB. R. 13; D. R. 10). Motions for new trials, filed by petitioners on March 4, 1947, were overruled on April 7, 1947 (DiB. R. 13–14; D. R. 10–11). The petition for writs of certiorari was filed June 28, 1947. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

The Act of February 13, 1911, as amended, provides for the payment of extra compensation to certain customs employees when required to work on "holidays". Did the Court of Claims err in denying such extra compensation for work performed on days which, though ordinarily observed as holidays in peace-time, were designated during the war, by Presidential directive and administrative order, as regular work days?

STATUTE INVOLVED

The Act of February 13, 1911, c. 46, Sec. 5, 36 Stat. 901, as amended by the Act of February 7, 1920, c. 61, 41 Stat. 402 (19 U. S. C. 267) reads as follows:

> the Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to

remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or *holidays,* to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury: *Provided,* That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether

the actual lading, unlading, receiving, delivery, or examination takes place or not. * * * *Provided further,* That in those ports where customary working hours are other than those hereinabove mentioned, the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed. [Italics added.]

STATEMENT

On December 31, 1941, an order was issued by direction of the Secretary of the Treasury, requiring all Treasury Department employees, "in view of the war," to work on New Year's Day, 1942 (DiB. R. 4, D. R. 4). Additional orders issued from time to time thereafter also made Washington's Birthday, Decoration or Memorial Day, Independence Day, Labor Day, Armistice Day, and Thanksgiving Day in some or all of the years 1942 to 1945, regular work days for the Treasury employees (DiB. R. 4–7, D. R. 4–7). This governmental policy was embodied in 1943 in several directives issued at the direction of the President to the executive departments and agencies (DiB. R. 4–5, 5–6, D. R. 5, 6–7).[2]

[2] The President's directive of May 12, 1943, read, in part: "The necessity for maintaining maximum output in Govern-

Throughout this period, when such holidays were treated as regular work days for the Government service generally (January 1, 1942, through July 4, 1945), each of the petitioners was an Inspector of Customs and, as such, a *per annum* employee of the United States. In that capacity, each was assigned to work on a number of those days and did perform services which, if the days had had the status of holidays within the provisions of the Act of February 13, 1911, as amended, would have entitled him to extra compensation, payment of which would have been for the account of and chargeable to the carriers served. (DiB. R. 4, 8; D. R. 4, 9). Petitioners, however, though they received their base annual salaries, as augmented by the War Overtime Pay Acts (Act of December 22, 1942, c. 798, 56 Stat. 1068; Act of May 7, 1943, c. 93, 57 Stat. 75, 50 U. S. C. App., Supp. V, 1401 *seq.*), and extra compensation for certain holiday and overtime services not here

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ment activities throughout the war period requires that days normally observed by the departments and agencies as holidays should, with the exception of Christmas, be considered as regular work days for the duration of the war." (DiB. R. 5, D. R. 5.) On December 17, 1943, this directive was reaffirmed, the President's Administrative Assistant noting: "There is full realization of the long hours which Federal employees are continuously working in the interest of the war effort and of the fact that holiday work is performed by Federal employees without additional compensation. The policy with respect to work on holidays will be reconsidered at the earliest possible moment that progress in the war will permit." (DiB. R. 6, D. R. 7.)

involved (DiB. R. 3–4; D. R. 3), received no extra compensation for their services on the days referred to above (DiB. R. 8; D. R. 9).

The Court of Claims, finding these to be the facts, concluded, as a matter of law, that petitioners were not entitled to recover and that their petitions should be dismissed (DiB. R. 8; D. R. 9–10). Reading the term "holidays" in the Act of February 13, 1911, to mean only those "days that were holidays in fact, days on which their fellow Government employees were not required to work" (DiB. R. 11), the court, in an opinion by Judge Madden, held that Congress had not intended that extra compensation be awarded customs employees for work on any day "which, though named in a Federal statute as a holiday for certain other employees, was a day on which government employees generally, and particularly those who like the * * * [petitioners] were paid an annual salary, were working without extra compensation * * *" (*Ibid.*). Judge Whitaker, dissenting, urged that Congress had intended that the term "holidays" be read in "its commonly accepted sense" as embracing all "legal public holidays." (DiB. R. 12–13).

ARGUMENT

This suit involves a narrow question as to the construction of the term "holidays" as it appears without definition in a 1911 statute providing extra compensation for holiday work of customs

employees. The Court of Claims has read the provision as requiring extra compensation for services only on such days as are not regularly worked by Government employees. We submit that the court's construction is reasonable and consonant not only with the letter of the 1911 Act but also with the Congressional purpose in enacting the statute. Nor is it, as petitioners suggest (Pet. 11–12), in conflict with prior decisions of this Court. Further review of the decision below would therefore seem unwarranted.

1. There is no conflict between the ruling below and this Court's decision in *United States* v. *Myers,* 320 U. S. 561, 321 U. S. 750, which also involved the construction of the 1911 Act. The question there was not whether certain days were "holidays" for purposes of the statute, but whether customs inspectors were entitled to extra compensation for work performed on days concededly holidays, where such work was done within a regular 44-hour week. The Court held that extra compensation had to be paid for work done on holidays "without regard to * * * whether such services are additional to a regular weekly tour of duty" (320 U. S. at 574).[3] There

[3] The Court, however, agreed with the Government that the 1911 Act did not require extra compensation for night work except where such work was performed as overtime, that is, in addition to a regular tour of 9 hours (including one hour for food and rest) in any one day. See 320 U. S. at 573–574.

was neither holding nor implication on the issue here involved, whether extra compensation is required for days which, though normally holidays, were regular working days for the entire Government service at the time the customs services were performed.

2. There can be little question as to the underlying policy of the statute here involved. In contrast to ordinary Government employees, customs inspectors have constantly been subjected to abnormal and long working hours as a result of the common practice, prevalent since the early days of the 19th century, of permitting the unloading of vessels at night and on Sundays and holidays. An effort to alleviate this condition was first made in the Act of March 3, 1873, 17 Stat. 579 (see Cong. Globe, 42d Cong., 3d Sess., pp. 2009, 2205), which, as later extended (Sec. 25 of Act of June 26, 1884, 23 State. 53, 59; Act of June 30, 1906, 34 Stat. 633), was eventually replaced by the Act of February 13, 1911, 36 Stat. 901. The 1911 Act entrusted to the Secretary of the Treasury the fixing of the "reasonable rate of extra compensation for night services" to be charged to the carriers and paid to the employees, and in 1920, the working day was reduced to 8 hours and the extra compensation theretofore payable for night services was made payable instead for "overtime services of * * * customs officers and employees who may

be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays." (Act of February 7, 1920, 41 Stat. 402).

Throughout the history of this legislation, the dominant fact was that customs employees, because of the character of their jobs and the demands of the industry they served, were being required to work at such times and on such days as the rest of the Government workers were not. By providing extra compensation for such extraordinary work, Congress sought, on the one hand, to deter the shipping and transportation companies from compelling overtime and holiday work and, on the other, to award extra compensation to such customs employees as were nevertheless required to render such services. Certainly there is nothing to show that Congress intended to prefer the customs employee to other Government workers by affording him two additional days' pay on those days when all others were required to serve without any additional compensation. To compel a construction producing so incongruous a result, petitioners must obviously sustain a sizable burden. This they have failed to do.

The Joint Resolution of January 6, 1885, on which petitioners rely (Pet. 6–7), is plainly irrelevant. That statute, before it was repealed in 1938, designated certain specific holidays for

per diem employees of the Government, but it provided that they were to receive the same pay for such holidays as on other days; clearly, then, it had no significance for the *per diem* customs employees who, by the 1911 Act, as amended, were accorded triple pay for holiday work.[4] Nor is there any force in petitioners' suggestion that the courts alternatively accept as binding in their construction of the 1911 Act, the specification of holidays in the general statutes designating certain days as legal public holidays (see Pet. 7–8). There is no showing that the purposes of the general laws and the 1911 statute are related. A particular word in one statute frequently means something else in another statute (*Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 257–259) or even in another part of the same statute (*Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 433–434; *Helvering* v. *Stockholms etc. Bank*,

[4] In any event, whatever logic there may have been in importing the definition of the Joint Resolution into the 1911 Act prior to 1928, when the customs inspectors were made *per annum* employees (Act of May 29, 1928, 45 Stat. 955, 19 U. S. C. 6a), there was none thereafter; the legislation peculiarly made applicable to *per diem* employees thereupon became no longer applicable in its purposes or design to the *per annum* customs employees. It should be noted, moreover, that even before they were formally transferred to the rolls of *per annum* employees, in 1928, customs inspectors "'were paid for 365 days * * * thus receiving the equivalent of an annual salary.'" *United States* v. *Myers*, 320 U. S. 561, 568, n. 12.

293 U. S. 84, 86–88). And the term "holidays" may equally vary in purport from one context to another. See *Lehigh Valley R. Co.* v. *State of Russia,* 21 F. 2d 396, 404 (C. C. A. 2).

That the Customs Regulations had for years designated certain days as holidays, as the court below correctly held, "did not prevent the department from following the practice of the rest of the Government with regard to the nonobservance of holidays which had been observed before the war" (DiB. R. 12). Nor are petitioners aided by resort to "common parlance" (Pet. 9). Surely, in view of the evident policy of the statute, it quite accords with common parlance to read "holidays," so far as these customs employees were concerned, as not including those days during the war period worked by Government workers generally (and, indeed, probably by the great majority of persons engaged in private employment). To read the term otherwise, as petitioners urge, so as to embrace days not actually Government holidays, and thereby to discriminate by substantial extra payments in favor of a small class of Government workers and against the large majority of employees in the Federal service would, in our view, produce "an unreasonable result, 'plainly at variance with the policy of the legislation as a whole'" (*United States* v. *Rosenblum Truck Lines,* 315 U. S. 50, 55).

CONCLUSION

It is respectfully submitted that the petition for writs of certiorari should be denied.

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